

**WASHINGTON COUNTY COMMISSION**  
**MEETING MINUTES**  
**AUGUST 21, 2012**

The Regular Meeting of the Board of the Washington County Commission was called to order by Chairman Alan D. Gardner at 4:00 p.m. on August 21, 2012, in the Commission Chambers, Washington County Administration Building, St. George, Utah. Those in attendance were Chairman Alan D. Gardner, Commissioner James J. Eardley, Commissioner Dennis Drake, Washington County Administrator Dean J. Cox, Deputy County Attorney Eric Clarke, and Deputy County Clerk Christine Hall.

Chairman Gardner led the Pledge of Allegiance.

**AGENDA**

**CONSENT AGENDA:**

The Consent Agenda is a means of expediting routine matters which come before the Commission for approval. The Consent Portion of the agenda is approved by one (1) non-debatable motion. If any Commissioner wishes to remove an item from the Consent Portion of the agenda, then that item becomes the first order of business on the Regular Agenda.

- Consideration of Auditor-Approved Claims for Payment for August 8, 2012, through August 21, 2012
- Consideration of Administrative Adjustments: Real Property (attached)
- Consideration of Administrative Adjustments: Personal Property (attached)
- Consideration of Application for Settlement or Deferral of Privilege Taxes: Desert Canyon Holdings, S/N 6745-M-STL
- Consideration of Applications for Property Tax Abatement (10)  
Clifford & Delores Rosenkilde, S/N LV-VVE-6; Evan Williams, S/N SG-JDRE-1-4; Betty Miner, S/N SG-BCC-6-93; Vernon Jaques, S/N LV-3-B; Mark Houmard, S/N SG-SUR-24-1588; Bernice Hallman, S/N SG-CARC-B-24; Cindy Benson, S/N SG-ACE-2-24; Loraine Avery, S/N SG-SFTH-66; Darlene Aguiar, S/N W-WSR-1-8; Elias & Laurie Adorno, S/N LV-ZVES-2-44

**Actions of the Washington County Planning Commission Meeting / 7-12-12 and 8-14-12**

**Conditional Use Permit Extension:** Review extension on crushing operation (1) near Veyo, Utah, in Section 11, T40S, R17W, SLBM; and (2) Frei Pit in Section 36, T41S, R17W, SLBM, located south of Ivins. Progressive Contracting, Inc., applicant.

The planner reported this will be the eleventh (11<sup>th</sup>) extension for these two sites and there seems to have been no activity at these locations. As per the previous meeting

minutes, Progressive Contracting desires to retain the right of use for projects that may become available. Whereas, the County has been seeing a lot of development in the Ivins area, it would be well for the Planning Commission to review these uses annually and note that it is approved according to the conditions set at the previous meetings. The applicant John Wilson, representing Progressive Contracting Inc., stated the Frei Pit is no longer being utilized and therefore they are withdrawing the Conditional Use Permit for that location. He asked the extension for the Veyo location be approved as they want to keep that open in the event a job comes up to utilize those materials. He indicated there is a prospective NRCS job coming up. Chairman Wilson asked if there had been any negative comments or any complaints regarding these operations. The Planner answered there had not been. *Planning Commission unanimously approved.*

**General Plan Amendment:** Consider an approval on an amendment to the Washington County General Plan on text changes to a part of the public lands portion of the General Plan. County initiated.

The Planner stated that there would be several text changes to the General Plan public lands portion after the initial approval. The County Commission made several suggestions to Deputy County Attorney Rachelle Shumway, and she has provided the commission with the redlined copy. Commissioner Alan Gardner has worked closely with the Attorney's Office on these changes that have been properly advertised. *Unanimously approved by the Planning Commission, with the following facts and findings:*

- The General Plan was created with the idea that the Planning Commission review and recommend amendments as necessary to ensure quality of life, health, safety, and welfare in Washington County.
- These amendments clarify the existing Washington County General Plan.
- These amendments allow more local input with Federal and State Agencies for the betterment of Washington County.

**Conditional Use Permit Extension:** Review extension on permission to construct and operate an asphalt plant within the I-1 Section 1, T40-S, R13W, SLBM, zone near Pintura. Sunroc/Russell Leslie, applicant.

The Planner reported the applicant was not able to attend the previous meeting. This will be the fifth (5<sup>th</sup>) extension of the conditional use for an asphalt plant on 31.5 acres near Pintura. This year's review may include a temporary site plan/use for construction on Interstate 15, as they used the same temporary facility previously. The County Commission approved the I-1 zone change on the 6<sup>th</sup> of March and the CUP on March 27, 2007 (*County Code 10-12-3*). Prior to receiving a building permit on the permanent facility, the Planning Commission will have to grant Site Plan Approval (*County Code 10-12-4: D*), and at that time, the Commission will need to review Title 10-12-5: Special

Provisions, which may need to be considered with the Conditional Use Permit or Site Plan Approval. Access for haul trucks would be from the Browse Exit on I-15, with ingress and egress from an existing County Road and a private easement, which was installed when the temporary plant operation was approved several years ago. The motion in 2007 was as follows: *“...to recommend approval of the Conditional Use Permit, for a period of one (1) year, subject to site plan approval. The one year will begin at the time of activation, with no activity allowed beforehand.”*

Gene Beck representing SUNROC said it will be some time in the future that they will be ready for a permanent facility, so they would like to keep this open by using the portable facility. *Planning Commission unanimously approved.*

**Conditional Use Permit Extension:** Review extension of a gravel crushing operation in the Pintura area of Washington County. Dana Truman / Sunroc, applicant.

The planner said the applicant was not able to attend the previous meeting. In 2008, the first contract with UDOT for improvements to I-15 was fulfilled and there have been two more contracts since then. This is the fourth (4<sup>th</sup>) annual review, plus two ninety (90) day reviews in the beginning, for the crushing operation that the County Commission approved within the OST-20 zone. Access for haul trucks runs from the Browse Exit on I-15, with ingress and egress from an existing County frontage road and a private easement. The commission addressed the following issues as a part of the their previous motion in 2007: *“...hours of operation from 4:00 a.m. to 10:00 p.m., noting that the applicant will work in concert with the adjoining I-1 zone for sanitary and waste disposal, and other support for employees. Also noting, that if the crusher is moved from Phase 1 on the site plan to phase 2, an additional Conditional Use Permit will be required, that the property will be properly signed for safety with relationship to access, and that a stop sign will be installed as entering from the property to the frontage road.”*

Gene Beck representing SUNROC explained that they would like to keep this use available. *Planning Commission unanimously approved.*

**Conditional Use Permit Extension:** Review extension of an Ultra-marathon event, Red Mountain 50k, which begins west of Central on dirt roads and runs south of Red Butte to Gunlock, then on to the Shivwits Reservation along Old Highway 91, to Ivins on April 20, 2013. Red Mountain Running LLC/ Jeremy Frehner, applicant.

The Planner reported the applicant had been in attendance during the last meeting but was unable to stay for the extended session on the GEM Mine, and asked that the Commission approve the extension or table the request until he was able to attend the next meeting, which they did. This will be the fourth (4<sup>th</sup>) extension on the Red Mountain 50K to be

held in April 2013. This is an Ultra-marathon event 50K, which has approximately two hundred fifty (250) attendees listed under their special event coverage. The run begins west of Central on dirt roads and runs south of Red Butte to Gunlock, past the reservoir and through the Shivwits Indian reservation and on to Unity Park in Ivins. As previously reported, the applicant has obtained letters from the Public Works Department, BLM, and the County Sheriff. The Shivwits Indian Representative granted approval for crossing the reservation. The County wants to continue to be listed as a beneficiary on the liability insurance policy, review communication and emergency access. *Planning Commission unanimously approved.*

**Conditional Use Permit Extension:** Review extension for the "Redrock Relay Race" from Brian Head to SR18 near Enterprise, Veyo, through St. George, and other communities, then to SR9, ending at Zions, on Saturday, September 8, 2012, within the County unincorporated areas. Tim Collings, applicant.

This is a review of the third (3<sup>rd</sup>) extension for the two (2) day event sponsored by Tim Collings/Red Rock Relay to be held on September 8, 2012, ending at Zion's on the 10<sup>th</sup>. This is a twelve (12) man team event that covers one hundred and eighty (180) miles from Brian Head Resort and finishes at Zion National Park. There may be as many as two hundred and fifty (250) teams. The route has been changed to SR-18. The applicant has a liability insurance policy in place, listing Washington County as a beneficiary. The Washington County Sheriff's Department is aware of the event and is working with the applicant on schedules. *Planning Commission unanimously approved.*

**Conditional Use Permit Extension:** Review extension to locate a temporary batch plant and job site trailers within the OSC-20 Zone, for the expansion of the Red Butte Substation on Forest Service land near Central. Schmidt Construction, applicant.

The planner stated this is an automatic annual review. The applicant made a new application for a temporary batch plant on the site to facilitate a continuing job for the Forest Service at the Pine Valley Camp Grounds and a future bid going out on the second (2<sup>nd</sup>) phase of the Pacific Corp. (Rocky Mountain Power) Red Butte Substation near Central. As previously reviewed, they may haul gravel to this site from their pit in Iron County or utilize product from the Carl Bowler pit near Veyo if it does not have any clay. The Forest Service provided a new letter on this project, which is available. The commission needs to review this use conditionally within the OSC zone as being a use similar to the conditional uses and in harmony with the character and intent of the zone (10-6A-3 County Code). The applicant previously submitted permits from the Forest Service, Utah State Department of Air Quality, and OSHA Certification. The site will have a couple of job site trailers, two (2) port-a-potties, and the batch plant outside the perimeter of the substation site. *Planning Commission unanimously approved.*

**MOTION: Motion by Commissioner Eardley to Approve the Consent Agenda. Motion seconded by Commissioner Drake and carried by unanimous vote, with Commissioners Gardner, Eardley, and Drake voting aye.**

**REGULAR AGENDA ITEMS FOR CONSIDERATION:**

**EMERGENCY SERVICES REPORT / SHERIFF CORY PULSIPHER**

Washington County Sheriff Cory Pulsipher reported on six (6) Search and Rescue call-outs since his last report. They included a dehydrated hiker above Tuacahn Theater, a lost motorist on Utah Hill, helicopter response to Burger Peak, missing hikers in Pine Valley, and retrieval of a suspect who had assaulted an officer. Additionally, the body of a child who went missing in LaVerkin was recovered in a nearby river.

**PURCHASE REQUESTS / TREVOR COOMBS:**

Mosquito Abatement District, concrete work ..... \$11,116.00

*All purchases are budgeted, bonded, or paid for through grant funds.*

**MOTION: Motion by Commissioner Drake to Ratify the Purchase Request, as presented. Motion seconded by Commissioner Eardley and carried by unanimous vote, with Commissioners Gardner, Eardley, and Drake voting aye.**

**CONSIDERATION OF RESOLUTION NO. R-2012-1661, A RESOLUTION APPROVING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE UTAH DEPARTMENT OF CORRECTIONS AND WASHINGTON COUNTY FACILITATING THE USE OF A SEX OFFENDER REGISTRATION KIOSK BY THE WASHINGTON COUNTY SHERIFF'S OFFICE**

Undersheriff Bart Bailey explained that the Washington County Sheriff's Office was contacted by the Utah Department of Corrections, which is involved in a grant process. The UDOC purchased several new kiosks for the more efficient processing and registration of sex offenders. There is no cost to the County to house that unit at the Sheriff's Office, as it is covered by the grant.

**MOTION: Motion by Commissioner Eardley to Adopt Resolution No. R-2012-1661, a Resolution Approving the Execution of a Memorandum of Understanding between the Utah Department of Corrections and Washington County facilitating the use of a sex offender registration kiosk by the Washington County Sheriff's Office. Motion seconded**

**by Commissioner Drake and carried by unanimous vote, with Commissioners Gardner, Eardley, and Drake voting aye.**

**PUBLIC WORKS OR ROAD BUSINESS**

No items were presented today.

**COMMISSIONERS' REPORT**

No items were presented today.

**COUNTY DEVELOPMENT AND PLANNING BUSINESS**

No items were presented today.

**CONSIDERATION OF THE APPEAL OF THE WASHINGTON COUNTY PLANNING COMMISSION'S APPROVAL OF THE CONDITIONAL USE PERMIT REQUEST FOR A GYPSUM MINING OPERATION ON 11.3 ACRES OF BLM LAND, SECTION 24, T43S, R17W, GENERALLY LOCATED WEST OF ST. GEORGE / SUN RIVER AREA. FRED JOHNSON, AGENT / GOOD EARTH MINERALS, LLC, APPLICANT**

Deputy Washington County Attorney Eric Clarke described the process of this appeal via a PowerPoint presentation. The Commission is free to hear new evidence and then either accept the recommendation of the Planning Commission, impose its own conditions, deny it altogether, or order additional investigation. In this capacity, the Commission does not sit as a traditional legislative body but rather as a quasi-judicial body. It must adhere to all State and County ordinances; in this instance, the applicable ordinance is the zoning ordinance that already allows for mining operations in this area as long as the conditional use requirements are met. Finding that all requirements of the conditional use permit are met, the Commission must ratify the decision of the Planning Commission.

In order to deny a conditional use permit, there must be substantial evidence to support that decision. Public comment alone is not enough to meet the standard. There are six (6) general requirements and four (4) special requirements for the granting of a conditional use permit, and those can be found in the County Code.

Both sides will present their case, and the Commission may impose time limitations and allow for rebuttal. After those comments and any new evidence, the Commission may go into a Closed Session for consideration. Options are to uphold the decision of the Planning Commission, uphold the decision and impose certain conditions, overturn the Planning Commission's decision and deny the permit, or refer it out for additional

investigation. A verbal decision may be issued today, but in any case a written decision must be issued within fifteen (15) days of this date.

This appeal is the end of the administrative process on this issue. Anyone who feels negatively affected by the decision may appeal it to the Fifth District Court within thirty (30) days of that written decision.

Chairman Gardner said that first there will be a presentation by Good Earth Minerals, LLC (GEM), followed by a spokesperson representing the opposition.

Travis Christiansen, representing GEM, delivered a PowerPoint presentation. A summary of important points follows; a copy of the entire presentation may be obtained from the office of the Washington County Commission.

- In August 2011, the BLM published its draft Environmental Assessment (EA), with a Finding of No Significant Impact (FONSI)
- The scoping document from the BLM, setting forth basic parameters for the proposed project, was issued in September 2011
- A public meeting was held on September 22, 2011, with the residents of Sun River
- All appropriate documents have been submitted to the Commission
- In April 2012, the BLM gave its approval and published the Final EA
- In May 2012, another meeting was held at Sun River to discuss issues such as dust and noise
- On June 5, 2012, a conditional use permit was requested from the Planning Commission
- Maps show that the mine site and haul routes are substantially distant from the Sun River community
- Any impacts on the desert tortoise habitat are insignificant
- There are strict control requirements regarding dust, noise, and traffic
- A ninety four thousand, one hundred and sixty dollar (\$94,160) reclamation bond is required by the BLM
- Blasting is limited to 9:00 a.m. to 3:00 p.m. and will be infrequent
- Proper signage will be in place
- Anemometers will be placed on site to gauge air quality and wind, and adequate water will be supplied for dust control
- GEM states that it has met or exceeded all state, federal, and county requirements

Commissioner Drake confirmed that air quality will meet the same standards that are in place in the City of St. George, and Mr. Christiansen agreed. Any time the wind blows in excess of 30 mph, the mine operation will be shut down. Commissioner Eardley asked how many loads will be trucked through that area, and the response was approximately

seven (7) loads per day, at twenty (20) tons per truck, from stockpiled material in a staging area that is offsite, will be traveling southbound on Highway 91. The noise level for the mining operation from a five (5) mile distance has been likened to that of a whisper or a humming refrigerator.

Dr. David Blodgett, Health Officer of the Southwest Utah Public Health Department, was asked to speak to the potential health hazards of the mining operation. Dr. Blodgett said that his office researched the enforcement of standards for air quality and found that the proposed gypsum mine would be consistent with that which the Health Department would require. The process for complaints would go to the Public Health Department or the State Department of Environmental Quality.

One concern is the issue of Valley Fever, which is endemic to Washington County. The fungus lives in the top six (6) inches of the soil in desert environments, so it would be a concern only during initial excavation. The spores from the fungus will not travel five (5) miles unless wind speeds are in excess of thirty-five (35) miles per hour. There is a consistent number of cases reported each year, and this mining operation would not necessarily increase that number. From a public health standpoint, Dr. Blodgett did not recognize any increased danger attributable to the mine project.

Heath Snow, representing the Sun River Development and Homeowners Association, spoke next. Mr. Snow stated that:

- Specific haul routes had not been identified prior to this meeting
- Many documents have not been available to the public except through GRAMA requests
- Opponents of the mine want the opportunity to hire their own experts to review findings and possibly refute them
- He requests a postponement of this hearing for one hundred and eighty (180) days, representing a period of time for due process for the appellants
- He further requested the adoption of a County ordinance relating to zoning for extraction overlay

Mr. Clarke reminded the Commission that it is free to go into Closed Session to discuss issues related to potential litigation.

Mr. Christiansen said that he obtained most of the documents concerning this issue by downloading them from the BLM website, and Mr. Snow is capable of doing the same. This information has been accessible in the public domain for approximately a year.

Chairman Gardner opened up the floor for public comment, with certain conditions:

- Each person may speak for two (2) minutes;

- There should be no repetition of content
- There shall be no outbursts from the audience

The following persons addressed the Commission:

- Don Stricklin, President of the Homeowners Association of Sun River, discussed the haul route, air quality, water, visibility of lights at night; the fact that a bond has not yet been posted, and the issue of reclamation (Chairman Gardner granted Mr. Stricklin additional time for his comments);
- Michael Cruz, a retired environmental scientist, expressed concerns about who would monitor dust and other air-quality issues and enforce penalties for non-compliance with regulations;
- Wade Reynolds, a retired civil engineer, objected to the lack of quantitative, scientific data and asked how GEM plans to reclaim a sixty (60) to eighty (80) foot hole;
- Barry Fleisher, a local physician, asked how the recreational purpose of Washington County can be reconciled with a mining industry; also, he mentioned the presence of crystalline silica in the area, which may be carcinogenic;
- Bob Cook questioned the presence of a verbal rather than a written agreement about water sources;
- John Hinton said that there has been no need for a baseline for air and water quality until now, and that it is up to the business to establish that baseline;
- Sean Emmett said he was pleased to see that the land in question will be put to good use

Mr. Christiansen said that the mine area would be fenced off, and Mr. Fred Johnson mentioned that there will be incremental reclamation, that is, the mine will be reclaimed in twenty (20) to forty (40) foot sections.

Dr. Blodgett pointed out that silica is simply sand, and there is an abundance of that substance in the desert already.

**MOTION: Motion by Commissioner Eardley to Go Into a Closed Session. Motion seconded by Commissioner Drake and carried by unanimous vote, with Commissioners Gardner, Eardley, and Drake voting aye.**

Upon completion of the Closed Session and resumption of the Open Meeting, Commissioner Eardley made the following motion:

**MOTION: Motion by Commissioner Eardley to accept the decision of the Planning Commission; to express gratitude to all citizens for their input and comments; and to incorporate the concerns of citizens into a Final Written Decision, to be issued no more than fifteen days from**

**this date. Motion seconded by Commissioner Drake and carried by unanimous vote, with Commissioners Gardner, Eardley, and Drake voting aye.**

There being nothing further to come before the Commission, the meeting was adjourned at 5:45 p.m.

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CHRISTINE S. HALL  
DEPUTY CLERK

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ALAN D. GARDNER  
CHAIRMAN